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OEA

SERVICE DATE – JANUARY 4, 2013

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB 33 (Sub-No. 309X)

**Union Pacific Railroad Company – Discontinuance of Trackage Rights and Abandonment
of Freight Easement Exemption – in Alameda County, Cal.**

Docket No. AB 980 (Sub-No. 2X)

**Santa Clara Valley Transportation Authority – Abandonment of Residual Common
Carrier Service – in Alameda County, Cal.**

BACKGROUND

In this proceeding, Union Pacific Railroad Company (UP) and Santa Clara Valley Transportation Authority (VTA) filed a joint petition under 49 C.F.R. § 10502 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment of two interests, a freight operating easement and a residual common carrier obligation, over a line of railroad in Alameda County, California. The joint petition seeks authority from the Surface Transportation Board (the Board) for UP to abandon its freight operating easement upon, and for VTA to abandon its residual common carrier obligation upon a portion of the San Jose Industrial Lead between milepost 5.38 and milepost 7.35 near Warm Springs in the City of Fremont, a distance of approximately 1.97 miles (the Line). A map depicting the Line in relation to the area served is appended to this Environmental Assessment (EA). UP and VTA (together, the Applicants) also seek exemption under 49 C.F.R. § 10502 from the Offer of Financial Assistance Provisions of 49 C.F.R. § 10504 and from the Public Use Provisions of 49 C.F.R. § 10502. If the petition is approved, the Applicants state that the Line would be retained and rebuilt for future inclusion in the Bay Area Rapid Transit System (BART).

ENVIRONMENTAL REVIEW

UP and VTA submitted an Environmental Report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. The Applicants served the Environmental Report on a number of appropriate federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 C.F.R. §

1105.7(b)].¹ The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

The Applicants state that no changes to rail operations or diversion of traffic would occur as a result of the proposed action. During the past two years, the Line has been used to provide service to several UP yard tracks located between the Line and the adjacent UP Warm Springs Subdivision and for the movement of overhead traffic originating or terminating on a section of the San Jose Industrial Lead that was the subject of a prior abandonment proceeding² and which previously served the Milpitas yard and industrial park. All traffic to and from these locations now moves over recently constructed connections to the UP Warm Springs Subdivision, with the result that there is currently no traffic over the Line.

If the petition is approved, the Applicants state that the Warm Springs area would continue to receive rail service from other existing UP lines, as well as rail lines owned and operated by other companies in the vicinity of the Line. The Applicants state, and OEA review has confirmed, that the area is also served by numerous state and local roads.

Should the Board approve the petition, and should the Line be incorporated into the BART system in the future, it is likely that passenger rail traffic will increase along the Line. The potential impacts to the natural and human environment of this and other changes resulting from post-abandonment activities have been thoroughly documented and addressed in an Environmental Impact Statement (EIS) prepared by the Federal Transit Administration (FTA) in coordination with VTA for the Silicon Valley Rapid Transit Corridor project, a component of the BART system.³ The EIS concludes, in part, that the expansion of public transit as a result of the proposed action would have the beneficial overall effect of relieving road traffic in adjacent communities.

Accordingly, it is the opinion of OEA that the proposed action would not adversely impact the development, use, or transportation of energy resources or recyclable commodities; the transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

¹ The Environmental and Historic Reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB 55 (Sub-No. 716X).

² STB Docket Nos. AB 33 (Sub-No. 303X) and AB 980 (Sub-No. 1X)

³ Federal Transit Administration and Santa Clara Valley Transportation Authority. (2010). Final Environmental Impact Statement and 4(f) Evaluation. Available online at: <http://www.vta.org/bart/finalEIS2010.html>.

Salvage Activities

According to information provided by the Applicants, the Line is located in a largely developed area, surrounded by streets, highways, mass transportation services, utilities, and public parks. It is currently owned by VTA with rail service provided by UP pursuant to an operating easement and trackage rights agreement.

Typically, in an exempt abandonment, if a notice of exemption becomes effective, the railroad is able to salvage track, ties and other railroad appurtenances and dispose of the right of way. Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and re-grading of the right-of-way by the railroad that owns the track material. Salvage may be performed by the line owner within the right-of-way, or, if necessary, via the construction of new access points to the right-of-way. In this proceeding, the Applicants have stated that they do not intend to salvage the line and that, should the petition be approved, the Line would be incorporated into the BART system.

The Applicants have requested comments from the U.S. Natural Resource Conservation Service (NRCS) regarding the potential impacts of the proposed action on prime agricultural land, but has received no response to date. Because the Line is located in a largely urban area, and because no salvage activities are proposed, OEA does not believe that any prime agricultural land would be affected by the approval of this petition. Accordingly, no mitigation regarding the conservation of prime agricultural land is recommended.

The Applicants have requested comments from the California Coastal Commission regarding the potential impacts of the proposed action on land or water use within a designated coastal zone, but have received no response to date. Because the proposed action is located within the San Francisco Bay watershed, the State authority with jurisdiction over coastal zone management issues is the San Francisco Bay Conservation and Development Commission (BCDC). Because the Line is located more than 100 feet inland from the shoreline of San Francisco Bay, does not cross and is not adjacent to any tributary of the bay, and because the proposed action does not entail any salvage activities, a BCDC permit likely would not be required. Accordingly, no mitigation regarding the protection of coastal resources is recommended. OEA is sending a copy of this EA to BCDC for their comment and review.

The Applicants have requested comments from the U.S. Environmental Protection Agency (EPA), the California Environmental Protection Agency (CEPA) and the U.S. Army Corps of Engineers (Corps) regarding the potential impacts of the proposed action on water resources, but have received no responses to date. OEA notes that the Line crosses an area designated by the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, but otherwise does not cross and is not adjacent to any waterway.⁴ Because the proposed

⁴ Federal Emergency Management Agency (FEMA) Mapping Information Platform,

action does not involve any salvage activities, OEA believes that the proposed abandonment would not result in the discharge of dredge or fill material into the waterways or wetlands of the United States; erosion or sedimentation affecting waterways; or any change to the flow of water in the vicinity of the Line. Accordingly, permitting under Sections 402 and 404 of the Clean Water Act (33 U.S.C. § 1342 and 33 U.S.C. § 1344) would not be required.

The Applicants state that there are no known hazardous waste sites or sites where hazardous material spills have occurred on or adjacent to the right-of-way. Accordingly, no mitigation regarding hazardous waste sites or hazardous material spills is necessary.

Pursuant to Section 7 of the Endangered Species Act at 50 C.F.R. § 402, OEA conducted a search of the U.S. Department of the Interior, Fish and Wildlife Service (FWS) Endangered Species Database to identify any Federally listed endangered or threatened species that may be affected by the proposed abandonment.⁵ The search indicated that the following protected species are known or thought to be present in the county where the Line is located:

- California tiger Salamander (*Ambystoma californiense*)- Endangered
- California red-legged frog (*Rana draytonii*)- Threatened
- Western snowy plover (*Charadrius alexandrinus nivosus*)- Threatened
- Conservancy fairy shrimp (*Branchinecta conservatio*)- Endangered
- Longhorn fairy shrimp (*Branchinecta longiantenna*)- Endangered
- Vernal pool tadpole shrimp (*Lepidurus packardi*)- Endangered
- Delta smelt (*Hypomesus transpacificus*)- Threatened
- Pallid manzanita (*Arctostaphylos pallida*)- Threatened
- Presidio clarkia (*Clarkia franciscana*)- Endangered
- Palmate-bracted bird's beaks (*Cordylanthus palmatus*)- Endangered
- Mission blue butterfly (*Icaricia icarioides missionensis*)- Endangered
- Callippe silverspot butterfly (*Speyeria callippe callippe*)- Endangered
- San Joaquin kit fox (*Vulpes macrotis mutica*)- Endangered
- Salt marsh harvest mouse (*Reithrodontomys raviventris*)- Endangered
- Alameda whipsnake (*Masticophis lateralis euryxanthus*)- Threatened
- Giant garter snake (*Rana draytonii*)- Threatened

To date, FWS has not submitted comments on the potential effects of the proposed abandonment on threatened or endangered species. However, OEA believes that, because the Applicants do not intend to conduct any salvage activities, the proposed abandonment would not result in any adverse impacts. Accordingly, no further consultation or mitigation regarding protected species is recommended.

<https://hazards.fema.gov/femaportal/wps/portal> (last visited December 26, 2012).

⁵ U.S. Fish and Wildlife Service, Endangered Species Database, <http://www.fws.gov/endangered/species> (last visited December 26, 2012).

The Applicants have requested comments from the National Park Service (NPS) regarding the potential impact of the proposed abandonment on wildlife sanctuaries or refuges, parks, or other protected areas, but has received no response to date. In its review of geospatial data, OEA has concluded that the proposed abandonment is not located in or adjacent to any local or national park; wildlife sanctuary or refuge; or other protected area. Accordingly, no mitigation regarding protected areas is recommended.

Because no salvage activities are proposed, OEA believes that the proposed abandonment would not result in any air emissions or noise impacts.

As mentioned above, the potential environmental impact of post-abandonment activities associated with the incorporation of the Line into the BART system have been addressed in the EIS for the Silicon Valley Rapid Transit Corridor Project prepared by FTA and VTA. These activities may include the repair and rebuilding of portions of the Line, as well as the demolition and subsequent replacement of a bridge over Mission Boulevard located at Milepost 6.72. On June 24, 2010, FTA issued a Record of Decision concluding that (1) an adequate opportunity was afforded for the presentation of views by all stakeholders and full consideration was given to the preservation and enhancement of the environment and to the interests of the community; and (2) all reasonable steps were taken to minimize adverse environmental effects.⁶

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. OEA is providing a copy of this EA to BCDC in case that agency may wish to comment on coastal zone issues.

HISTORIC REVIEW

According to the Applicants, the Line was originally constructed in 1921 by Western Pacific Railroad. UP sold the Line to VTA in 2002 and VTA granted a freight easement to UP as part of the purchase agreement. The Line consists primarily of 100-pound jointed rail laid in 1955 and 119-pound jointed rail laid in 1996. Should the Board approve the petition, the Applicants state that the Line would be incorporated into the BART system.

The Applicants state that the only railroad structure that would be affected by the proposed abandonment is a single-tracked 114-foot through plate girder bridge crossing over Mission Boulevard at Milepost 6.72. If the petition is approved, the Applicants state that the bridge would be replaced with a double-tracked structure dedicated to passenger rail traffic as part of the BART Extension project.

⁶ Federal Transit Administration. (2010). Record of Decision: Santa Clara Valley Transportation Authority Silicon Valley Rapid Transit Corridor Project, Santa Clara County, California. Available online at <http://www.vta.org/bart/documentlibrary.html>.

The Applicants served the Historic Report on the California State Office of Historic Preservation (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c). In its comments, the SHPO notes that the proposed project has been reviewed and consulted upon as part of the FTA Silicon Valley Rapid Transit Corridor project. The result of these consultations was an executed Programmatic Agreement (PA), which found that no known historic architectural properties would be affected by the proposed project and which established protocols for the handling of unevaluated and unanticipated archeological resources that may be encountered during construction.

Accordingly, pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, we have determined that no known historic properties listed in or eligible for inclusion in the National Register would be affected within the right-of-way (the Area of Potential Effect, or APE) of the proposed abandonment. The documentation for this finding, as specified at 36 C.F.R. § 800.11(d), consists of the railroad's Historic Report, all relevant correspondence, and this EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at www.stb.dot.gov.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally-recognized tribes that may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way of the proposed abandonment.⁷ The database indicated that there are no federally-recognized tribes with known ancestral connections to the project area. Accordingly, no consultation with federally-recognized tribes is recommended.

CONDITIONS

We recommend that no environmental conditions be imposed on any decision granting abandonment authority.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, abandonment of the Line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption would not be affected.

⁷ Native American Consultation Database, <http://grants.cr.nps.gov/nacd/index.cfm> (last visited December 26, 2012).

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Joshua Wayland, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket Nos. AB 33 (Sub-No. 309X) and AB 980 (Sub-No. 2X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Joshua Wayland, the environmental contact for this case, by phone at (202) 245-0330, fax at (202) 245-0454, or e-mail at waylandj@stb.dot.gov.

Date made available to the public: January 4, 2013

Comment due date: January 21, 2013

By the Board, Victoria Rutson, Director, Office of Environmental Analysis